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THE PROPER BASIS OF PRINCIPLES OF PRIVATE INTERNATIONAL LAW.

Possibly no subject of law is more superficially comprehended in this country than that of Conflict of Laws. This fact is emphasized by the somewhat obscure and discursive criticism of the case of Loucks v. Standard Oil Company, 120 N. E. 198, by our esteemed contemporary, the Yale Law Journal, in its current (Nov.) issue.

There was nothing particularly unusual in the decision itself. The New York court, following the familiar rule that the *lex loci deliciti* defines the rights and remedies which arise out of a foreign tort, enforced a Massachusetts statute which gave the estate of a deceased person, killed by the wrongful act of another, a right of action to recover damages not less than $500 or more than $10,000. The court also held, in accordance with the great weight of authority in this country, that while such a statute was penal in form it was remedial in fact and enforceable as creating a right in favor of the person injured, by any court, which had the general power to apply the remedy given.

The decision is not an outstanding one in any respect. It does not, so far as we are aware, announce any new principle or "constitute another step toward a uniform interstate enforcement of vested rights." Our courts long ago took that step, and we know of no rights created and existing in a foreign state that are not recognized today in every other American court, with certain well-founded exceptions, such as rights, the enforcement of which would offend the public policy or the forum, or which are penal in their nature or, concern the transfer of the title to real property.

It may be admitted that in America we have not given to this subject the same careful study and research that our scholars have given to other themes. And yet we have such great authorities on this subject as Wharton, Minor and Beale, whose works and researches have received international recognition.

Of course the subject of conflict of laws is, in many respects, a difficult one, but the difficulty is mainly in the application of its rules not in regard to its "fundamental" concepts. The underlying and fundamental concept of conflict of laws is expressed in the familiar maxim *"locus regit actum."* The place where a transaction has its *situs* controls the transaction and all rights and remedies which grow out of it. It is apparent, therefore, that the real difficulty in this subject of law is in the application of the rules given to determine the *situs* of a given transaction. Thus, the rule that the validity of a contract is governed by the law of the place where the contract is made is only a corollary of the maxim *locus regit actum*, but the difficulty in a particular case is in determining the place where the contract is made. Thus, suppose A of Chicago authorizes B to solicit an order from C in Philadelphia. B takes C's order in Philadelphia and the question arises where is the *locus* of the contract? That question must be determined by principles of contract law. Where was the last act done which put the contract into force? If B is a general agent authorized to contract for A without restriction the contract is made in Philadelphia. If B, however, must submit his orders to A for approval, and A gives such approval in Chicago, then Chicago is the place of contract. The same process can be used in every possible case where it is contended that a foreign right is involved.

Our contemporary offers no new objection to the soundness of this fundamental maxim (*locus regit actum*) but it attempts—quixotically—to shiver its lance

against the fundamental principle, the territoriality of law. Our contemporary quotes the rule laid down by Justice Story that "no state or nation can by its laws directly affect or bind property out of its own territory, or bind persons not resident therein, whether they are natural born subjects or others," and then makes this following strange observation: "To what extent is such a statement true? What meaning can it have? Aside from some existing system of positive law—constitutional, statutory, or judge-made—it seems clear that there is no inherent reason why the law of any sovereign nation—England, for example—may not, if the sovereign English Parliament or the appropriate English court so decrees, attach any legal consequences whatever to any state of facts whatever, including acts done in other countries, even by persons not citizens or residents of England. This simply amounts to saying that as a sovereign nation England may determine what legal consequences shall in England, by English courts, be held to attach to a given state of facts, if in any way the English court is presented with a case involving them."

Of course it is possible for any nation to declare its law to be supreme all over the world and attempt to create rights and obligations out of transactions occurring in foreign territory and enforce these rights when the parties to such transaction sue in its own courts. But only a few pagan nations of antiquity ever tried to do this. Savigny, the great Continental authority on Conflict of Laws, declares in his treatise on that subject (Guthrie's Translation 2nd Ed. 68) that "to carry on the principle of independent sovereignty to its utmost extent with regard to aliens, would lead to their complete exclusion from legal rights. Such a view is not strange to the international law of the Romans, and even where it was not enforced by them against foreign countries, a great distinction as to the capacity for rights was always maintained between Romans and foreigners."

The fundamental reason for the maxim—*locus regit actum*—is not comity in the mere sense of courtesy, but the inherent desire and purpose of every court and law-making body to do justice to those who appeal to the courts. It is a court's business to declare and enforce rights. Such rights may and do arise in one country which must ultimately be enforced in another. If the latter jurisdiction should insist on the application of its own law (as it could do) it would arbitrarily deny rights already existing under the only law which had at the time, authority over the parties and the subject matter of the transaction. No court worthy the name, no law which honors justice, would ignore the existence of rights created under the law of another state. The result would be as Savigny declares, the "exclusion of aliens from all legal rights."

The maxim, *locus regit actum*, therefore, is a fundamental concept of law, universally recognized in every civilized country and essential to any system of law that purposes to do justice between man and man.

NOTES OF IMPORTANT DECISIONS.

CORPORATIONS—LIABILITY OF CORPORATION FOR SLANDER UTTERED BY ITS AGENT.—In the earlier decisions it has been generally held that a corporation could not be guilty of slander uttered by its agent except when such slander was expressly authorized or ratified. The argument was that the utterance of a slander was personal to the agent and could not be said to be within the scope of his employment. In this respect slander seemed to be different from any other tort. But recent decisions have quite abolished the former distinction of which tendency the recent case of Buckeye Cotton Oil Co. v. Sloan, 250 Fed. 712, is a good exemplification. In this case the manager of the defendant Oil company declared in the presence of witnesses that Sloan, an agent of the company, was short

$60,000 in his accounts. The defendant contended that it was not liable for the agent's slander, not having authorized or ratified it. Court rejected this view, saying:

"There is much conflict of authority on the question of the liability of a corporation for a slander uttered by its agent. In the earlier cases, there was a marked tendency to reduct the liability of a corporation for such slander within narrower limits than in other torts committed by its agents. The later cases, however, tend decidedly to depart from this restriction. And after careful consideration of the authorities, we conclude that the sound rule established by the greater weight of the more recent cases is that a corporation is liable for a slander by its agent when uttered within the scope of his employment and in the performance of his duties in the course of transacting the business of the corporation. International Text Book Co. v. Heartt (4th Circ.) 136 Fed. 129, 132, 69 C. C. A. 127; Grand Union Tea Co. v. Lord (4th Circ.) 231 Fed. at page 393, 145 C. C. A. 384; Hypes v. Southern Railway, 82 S. C. 315, 64 S. E. 395, 21 L. R. A. (N. S.) 873, 17 Ann. Cas. 620; Rivers v. Yazoo Railroad, 90 Miss. 190, 212, 43 South. 471, 9 L. R. A. (N. S.) 931; Fensky v. Casualty Co., 264 Mo. 154, 160, 174 S. W. 416, Ann. Cas. 1917D, 963; Payton v. Clothing Co., 136 Mo. App. 577, 118 S. W. 531; Waters-Pierce Oil Co. v. Bridwell, 103 Ark. 345, 347, 147 S. W. 64, Ann. Cas. 1914B, 837; Sawyer v. Railroad, 142 N. C. 1, 54 S. E. 793, 115 Am. St. Rep. 716, 9 Ann. Cas. 440; Newell, Slander & Libel (3d Ed.) § 448, p. 436. This accords with the general rule stated by the Supreme Court as to the liability of a corporation for torts committed by its agents, and specifically applied by it in libel suits. Philadelphia Railroad v. Quigley, 21 How. 202, 210, 16 L. Ed. 73; Washington Gas Light Co. v. Lansden, 172 U. S. 534, 19 Sup. Ct. 296, 43 L. Ed. 543, and cases cited. And see Stewart v. Wright (8th Circ.) 147 Fed. 321, 327, 77 C. C. A. 499, citing many cases illustrating the application of this general rule to various torts."

The question whether a corporation should be liable for the wild outbursts of passion of any of its high-tempered employes is a question on which there could easily be an argument on both sides. The court in the instant case, however, takes a very radical position and declares that a corporation is liable for the slander of its agent even though uttered in opposition to express orders of his superior. The court said:

"We perceive no sound reason why the liability of a corporation for the act of its agent should differ in an action for slander from that in actions for libel or other torts, and can not agree in the view expressed in Southern Ice Co. v. Black, 136 Tenn. 391, 397, 189 S. W. 861, An. Cas. 1917E, 695, and other authorities, that in an action of slander, as distinguished from libel and other torts, a corporation is not liable (in the absence of ratification) for the utterances of its agent unless it either expressly authorized the slanderous words or they were necessarily spoken in the course of the agent's duty. On the contrary we think the general rule applicable in slander, as in other torts, is that stated in New York Railroad v. United States, 212 U. S. at pages 493, 494, 29 Sup. Ct. 304, 53 L. Ed. 613, namely, that a corporation is responsible for the acts of its agent done in the course of his employment, although done wantonly, recklessly, or against express orders, and which, although not within his strict powers, he has assumed to perform for the corporation when employing the powers actually authorized. In slander, as in other torts, a corporation, as any other master, is responsible for the act of its servant done in furtherance of its business, not merely when the servant's authority to do such act has been expressly conferred, but also when it was incident to the duties intrusted to him, even though in opposition to his express or positive orders. Sawyer v. Railroad, 142 N. C. at page 8, 54 S. E. 793, 115 Am. St. Rep. 716, 9 Ann. Cas. 440."

We do not share the extreme views of the court in the quotation just given. Surely, if the act is done wantonly and against the "positive orders" of the principal, it can hardly be said to be done in the scope of his employment. Such a rule leaves wide open the door to a servant to wreck his spite and ill-will upon his master by involving him in liability for his own unauthorized attack upon the reputation of another.

ALIENS—POWER OF ALIEN PROPERTY CUSTODIAN TO DEMAND SHARE OF ESTATE DUE ALIEN WITHOUT GIVING A REFUNDING BOND.—Does the Alien Property Custodian, by his power under Act of Congress, obtain any greater right than the alien himself in claiming share in an estate due such alien enemy? This was the question before the New Jersey Court of Chancery in the case of Keppelmann v. Keppelmann (decided September, 1918, not yet reported), 60 N. Y. Law J. 341.

In this case the plaintiff trustee requests the court of equity for instructions with respect to a payment due an alien enemy. Two parties claimed the share. Schulz and Ruckaber claim it under a power of attorney from the alien legatee. A. Mitchell Palmer, Alien Property Custodian, claimed the share under Act of Congress. The New Jersey law required the legatee in such cases to give a refunding

bond to protect creditors. The Alien Property Custodian refused to give such bond, insisting that the New Jersey law did not affect his right; that the Trading with the Enemy Act was a war measure under which any property defined by the President as Commander-in-chief of the Army as alien property must be forthwith paid over to the Alien Property Custodian.

The court, in denying the right of the Alien Property Custodian to take over the claim of an alien legatee in a New Jersey estate without giving the refunding bond required by the New Jersey law, said:

"The Trading with the Enemy Act deals with property of alien enemies and the interest of alien enemies *in* property, *not* with property *in which* alien enemies have an interest, and the authority of the Alien Property Custodian is over the property of and interests of alien enemies in property, not in property *in which* alien enemies have an interest. In the case at bar the right of the alien enemies in the shares in question is to receive those shares from the trustees upon the performance by them of a condition, to wit, the giving of refunding bonds. The alien enemies have beneficial but not legal rights in the shares. To those beneficial interests the Alien Property Custodian succeeds, but he cannot convert the beneficial interests into legal estates and reduce the shares to his possession until the conditions which the alien enemies must have performed are performed and until the trustees and the creditors of the estate are fully protected. The provisions of section 7, subdivision e, of the Trading with the Enemy Act, does not protect the trustees or the creditors of the estate."

The court further expressed it as its opinion to direct an alien's share of an estate to be turned over to the Alien Property Custodian without compelling him to give the required security to creditors would be tantamount to the taking of property without due process of law. On this point the court said:

"Assuming that the acquittance of the Alien Property Custodian would operate to release the executors from all liability so that suit might not be brought against them by creditors of the estate, then the rights of creditors of the estate would be taken away without compensation, and no substitute would be provided. I had always supposed that the constitutional interdiction against the taking of private property for public purposes without compensation or the providing of a method of compensation is as effective in time of war as in time of peace, and that the government may not take private property for war purposes without compensation or without providing a means by which compensation may be made as in cases of eminent domain."

REGISTRATIONS IN CALIFORNIA UNDER THE SO-CALLED TORRENS SYSTEM.

The so-called Torrens law in California was passed by the State Legislature in 1897. One of the outstanding features of that Act was the safety provisions making the decree of registration safe and reliable. Each application was required to be accompanied by an abstract of title compiled by a searcher or title company under bond. The court was required to examine the abstract or appoint a referee to do so, after which examination notice was required to be given to all interested parties as shown by the petition and by the abstract; thus, all interested parties, as shown by the record and by the petition, were brought before the court so that all matters affecting the title were examined thoroughly by the court or referee, and all parties served before decree of registration was rendered.

Less than a dozen pieces of property were ever registered under the provisions of this Act, although it remained in force from 1897 to December 19, 1914.

The proponents of the so-called Torrens system argued that the reason why our people did not register their lands was because of the expense in placing before the court the evidence of the title, and second, because the law contained no provision for an assurance fund. Every time the legislature met from the time the 1897 law was enacted the advocates of this system attempted to secure an amendment doing away with the necessity of furnishing an abstract, and in other ways to lessen the cost of registration without regard to safety.

But such propositions did not appeal to any legislature and the proponents of this system were compelled to wait until after the initiative and referendum became effective in our state. Then by the aid of a disgruntled newspaper, certain tax title sharks, a few unemployed attorneys and socialists (without capital), organized Tor-

rens title companies. These advocates adroitly secured the aid of the women, and through the Women's Clubs the initiative was launched and the present so-called Torrens law became effective on December, 1914.

The outstanding feature of this new act is the ease with which registration can be made. If it appears by the petition that the applicant, either by himself or his predecessors in interest, has been in the actual exclusive or adverse possession of the land or any part of the land described continuously for more than five years next preceding the filing of the petition, claiming to own the same in fee against the world, and that he has, or that he and his predecessors in interest have paid all taxes during the five-year period, then no abstract or other documentary evidence of title is required. Any number of persons may join in one petition. No provision is made where adverse possession is alleged in the petition to place before the court the record title or to require notice to be given to parties having interest in the premises other than those specifically alleged in the petition. The usual notice is required to be published.

This act provides for an assurance fund consisting of one-tenth of one per cent of the assessed valuation on the original registration only. No further contribution to the assurance fund is made, regardless of the number of subsequent transactions in the registered title.

As soon as this law became effective the Torrens title companies, which were already incorporated in San Diego, Los Angeles and Pasadena, aided by this disgruntled newspaper, having an imaginary grievance against one of the leading title companies in Los Angeles, began a campaign of education, causing skillful articles to be written and printed in many of the newspapers throughout the state, and by the issuance and circulation of pamphlets and booklets, by hand-bills delivered from house to house, such as are used by a class of cheap merchants advertising bargain sales, and by a personal solicitation and house to house canvas, registration clubs were formed. Many joined in one petition. The expense was pooled, and the cost of registrations ceased to be a question. This campaign of advertising, education and personal soliciting was kept up for the first three years. As a result registrations in the State of California have been made as follows:

County	Number of Instruments filed with Torrens "Registrar"	Number of Instruments filed with County Recorder	Per cent. of Instruments filed with Torrens "Registrar"
Los Angeles	2942	470,848	.62%
San Diego	568	82,972	.68%
Orange	141	54,795	.25%
San Bernardino	82	68,285	.12%
Imperial	111	75,679	.14%
Riverside	33	46,520	.07%
Kern	14	38,206	.026%
Tulare	11	51,613	.028%
Humboldt	51	15,063	.34%
Total for 9 Counties..	3953	903,977	.43%

Total amount of "Assurance" Fund accrued to June 30, 1918 (estimated)....$	9,150.67
Total assessed valuation of real property and improvements (excluding "operative property") in State of California	2,592,211,900.00
Assessed value of real property registered	9,150,669.00
Percentage of property registered, shown by assessed value	.35%

In 1915 there were six Torrens title companies in Los Angeles County.

Not long since there was handed out a decision of our courts to the effect that no corporation could practice law, and this made it impossible for a company engaged in the Torrens business to file in its own name as attorney a suit for registration of property under the Torrens law. The companies have dwindled down to two. The practice was taken up by individual attorneys or law firms. In the Pasadena telephone directory there appears the name of a Torrens title company. I am told this concern is a fictitious corporation, simply used by an attorney as an additional means of getting business. Los Angeles has listed in the telephone book a Torrens title company. This is used merely as a means of attracting business for a certain law firm.

I am indebted to some one of the title companies from each of said counties for these interesting figures, and for a careful survey of their respective counties.

In examining these reports we find:

Fact 1. That of the fifty-eight counties in the state there are forty-nine not infected with the Torrens' germ.

Seventy-eight per cent of all the registrations are in Los Angeles County, eleven per cent in San Diego County, six per cent in Orange County and five per cent in the remaining six counties.

Fact 2. The Torrens' germ (as shown by these reports) will not work except it be nursed and fed by Torrens title companies and house to house visitation.

Fact 3. About ninety-nine per cent of the attorneys are immune from this germ. The bar generally condemns the system and refuses to have anything to do with it and warn their clients to beware.

Fact 4. Of the 5109 parcels registered, not a single decree was based on an abstract furnished by a title company having property indexes. A very few decrees were based on abstracts or chains of title furnished by Torrens title companies, without plant or indexes, such abstracts being prepared solely from the name indexes of the county recorder and from the papers in the hands of the applicant.

Fact 5. With very few exceptions every decree has been by default, no one being served having any interest in the property. Even lien holders so alleged in the petition are very generally not served, the attorneys relying on the printed notice, so that nearly every decree of registration in the State of California is based wholly on the statements and testimony of the applicants only.

Fact 6. Banks, life insurance companies, mortgage guarantee companies, loan companies, building and loan companies and investors generally, and almost without exception, will not accept a Torrens certificate. In at least one county the bankers' association gave notice that the banks would not accept Torrens certificates without a certificate from some regular title company.

Fact 7. The loans reported as made are very largely renewals, and if not renewals, the mortgagee (as in case of the Federal Land Bank of Berkeley), requires an abstract or policy of title insurance to accompany the Torrens certificate.

Fact 8. (Self evident from the foregoing seven facts.)

The registrant's trouble begins when he tries to sell or borrow. In many cases a title company is called on for an abstract, and a title insurance company for a policy. In all such cases the registrant is required to comply with both systems of conveyancing. The costs are more than doubled. So great and vexatious were the troubles of the registrants that they made complaint to the Torrens title companies and their attorneys, and were solemnly promised full relief from the state legislature in 1917.

Senate Bill No. 793 was introduced by Senator Brown making it a misdemeanor for any bank, loan company, mortgage company or other person to discriminate against Torrens certificates. This bill died in committee. New promises are made.

This survey shows a marked falling off in the Torrens activities in the nine counties without exception. Even in Los Angeles County, which has proven to be the most fertile soil, the high water mark was reached in 1916, when the number of parcels in the petitions for registration averaged one hundred and ninety-eight per month. In 1917 this average fell to one hundred and eighty-seven. It has now dropped to one hundred and seventy-six.

The manager of the leading Torrens title company in Los Angeles informed the writer some months ago that his company lost $7000 the first two years of its activities, and that the company had now established an abstract and escrow department, and that it was now entering the field as an abstract and certificate company, furnishing its cli-

ents whatever was demanded in the way of evidence of title.

Fact 9. Many errors have been made in registration decrees, errors in vestings, in omitting valid liens, mortgages, trust deeds, and tax sales. Errors in descriptions are numerous.

Let me give you just a few examples of the finished product of the system.

Reported from Los Angeles County. There have been numerous cases of errors appearing in the registration of land in this county. The laxity in requiring the proper evidences of title naturally has been somewhat to blame for these faults. In one case a mortgage of considerable size was omitted from the decree registering the property and the Torrens certificate issued free and clear of such mortgage. This, however, was corrected, whether according to law or not, by supplemental decree and the Torrens certificate re-issued showing the mortgage.

In another case a street had been widened, cutting ten feet from the property on both sides. In describing the land sought to be registered the applicant or his representative described the land as running from the new street line a distance equal to the original depth of the lot, thereby cutting from the land of his neighbor, so far as the records show, a parcel of land ten feet in depth by the width of the lot. This case, I believe, has not been corrected.

In a neighboring city a lot owner deeded three feet off of the side of his lot and later successfully registered the entire lot under the Torrens system without mention of the three feet that had been deeded. This case, we believe, to be also uncorrected. An old soldier living at the Soldiers' Home knew that his comrade in the home was the owner of a lot, and upon the death of the owner said soldier registered the lot in his own name, claiming possession for five years previous to the application.

It is a common thing in the Torrens cases in this county to find that regardless of the condition of the record title, that the same will be vested in a man and his wife as joint tenants, the court apparently assuming that the authority rests with it to place the title in such form as the applicants may desire, if such registration satisfied the parties in question, although it might not, the law governing joint tenancies.

Another very interesting case which has come to our attention and which we will cite as a hypothetical case, as we do not wish to divulge the facts or exact description.

"A" owned lot one; "B" owned lot two. "B" filed an application in court to register the property of "A," it not appearing whether this was an error or by deliberate intention. At any rate he succeeded in obtaining a decree registering "A's" lot in his name. It is understood that "A" does not know of the registration.

An interesting case is cited arising in Los Angeles County, wherein "A" and "B" were applicants for registration certificates. The certificates, by error in description when issued, showed a certain small tract in both certificates. In one the title was vested in "A," and in the other it was vested in "B." Attempt was made some time later to correct the description in these certificates, but still they are in error. This case emphasizes the fact that under the Land Registration Act for issuance of registration certificates, no provision is made for plats, and the greatest of confusion prevails in the description.

Quoting from the Los Angeles report:

"An interesting case was reported to us by an attorney in Pasadena recently, but we have not examined this fully and simply cite it as it came to us. A woman in Covina obtained from her mother, upon the latter's death, a parcel of land which vested in her, of course as her separate estate. She was married, but had no children. In December of last year she and her husband petitioned the Court to register the title under the Torrens law, requesting that the vesting be made in them as joint tenants. Before the decree was entered she died, and, according to the report of the attor-

ney, nothing was done to change the Torrens proceeding, except to register the property in fee simple in the name of her husband. There are numerous nieces and nephews, direct heirs of the deceased, living in Iowa, and these heirs have engaged counsel to prosecute their claims, and the case should develop into a very interesting affair."

The case of Follette v. Pacific Light & Power Corporation. In November, 1915, one conveyed the northerly 5 feet of lot 3, tract 2517, Los Angeles County, California, to the defendant, which deed was duly executed and recorded and immediately the defendant went into possession and continued in possession. Subsequently B filed his petition to register said lot 3 and knowingly failed to set forth in said petition, or the proceedings growing out of the same, the interest of said defendant in and to said lot, and failed to have inserted in the said summons and notice the name or interest of said defendant, and failed to have the said defendant served, or notified of the pendency of said action or proceedings, and failed at any time to advise or notify or inform the defendant of the registration proceedings, and the defendant had no knowledge.

The lot was registered and certificate issued without showing any interest of the defendant. On Feb., 1916, B— for valuable consideration sold and transferred to one G—. G— relied solely and exclusively on the Torrens certificate, and had no knowledge or information of the possession or interest of the defendant. On the same day G— conveyed to Follette, the plaintiff. Follette relied solely and exclusively upon the Torrens certificate, and had no knowledge or belief of the possession and interest of the defendant. Both G— and Follette were innocent purchasers for value, in the usual and regular course of business. None of the Torrens certificates referred to made reference to any interest of the defendant, but showed that the title was in the holder of the certificate in absolute fee simple, and not subject to any easement or right in favor of the defendant, or any other person.

This action was brought by the plaintiff against the defendant to quiet title in the plaintiff, and to obtain a decree that the plaintiff was the owner in fee simple and entitled to immediate and exclusive possession of said lot, and the whole thereof, and to compel the defendants to deliver up possession to the plaintiff, and to declare the claims of the defendant wholly null and void. The court granted the petition of the plaintiff and the defendant was ordered to move on. This case has been appealed. We look forward with interest to the final decision of the courts, for it does not seem possible that one may be so deprived of this property under the fourteenth amendment.

The Austin Case. In Imperial County one Austin gave a trust deed securing an indebtedness of $55,000.00 to a Utah corporation. Austin filed an action in the superior court against this Utah corporation, seeking to set aside the trust deed and cancel the indebtedness. The defendant corporation, although given a notice of the pendency of this action, was never legally served. The action was dismissed and the same attorneys substituted a Torrens proceeding and alleged in the petition for registration that the $55,000.00 note and trust deed had been executed and delivered upon fraudulent representation, and sought cancellation of the indebtedness and the issuance of a registration certificate omitting the trust deed in question. The usual Torrens publication of notice of hearing was had, but no notice was mailed to the Utah corporation, and no legal notice served on the Utah corporation. The court made its decree in accordance with the petition and the registration certificate was issued without reference to the $55,000.00 trust deed.

The owner of the indebtedness recently filed an action in the Federal court to have the registration proceedings set aside, which action is still pending.

The "McAdam Case." On October 8th, 1915, William J. McAdam, et al., filed suit in Tulare County to bring various properties under the "Torrens Title Act." The suit dragged along for several months; in fact, nearly two years.

On December 4th, 1916, while said action was pending, said McAdam executed a mortgage covering property in question, said mortgage being recorded in book 144, page 333 of mortgages.

On February 8th, 1917, a full release of the said mortgage was filed and recorded.

Subsequently said McAdam executed another mortgage covering the same property, dated February 5th, 1917, recorded February 13th, 1917, in book 145, page 380 of mortgages.

On April 30th, 1917, the "Torrens Certificate of Title" was issued and recorded in the recorder's office, covering this property. This certificate showed the satisfied mortgage in book 144, page 333, a valid lien against the property, and did not show or make any mention of the unsatisfied mortgage recorded in book 145, page 380.

When the parties interested discovered the situation they sent a release of this latter mortgage to the recorder, who at first demurred at accepting same for record, as the mortgage it released did not appear in the "Torrens Certificate;" however, he eventually filed the release with the papers connected with this certificate of title No. 2, and on the face of the mortgage he entered the following endorsement:

Cancelled satisfaction of mortgage filed November 6th, 1917. See file No. 1, certificate No. 2.

The Torrens certificate was absolutely incorrect and is incorrect at the present time.

Section 5 of the registration act provides that "An undivided share or an easement" may not be registered, but a number of such have been registered in San Bernardino County.

Numerous errors in decrees of registration in San Diego County as to encumbrances and vestings have been noted. Little, if any, attention is paid to existing easements, restrictions and reservations. In two or three cases an error has occurred in the description of the property so that land in another range or township has been registered instead of that intended. The First National Bank of this city has had two cases, one occurring in land registered in Los Angeles County, which the bank had attached, but which the owners attempted to register without mention of the attachment, and the matter having been noticed by the title insurance and trust company, was called to the attention of the bank, which appeared in the proceeding in time to have its attachment lien registered, succeeded shortly thereafter by payment of the amount, some $4500.00 or more. The other case occurred with respect to land in this county which stood in the name of the bank as security for a loan second to a first mortgage. The land was registered by the owner without mention of the lien or title of the bank. The bank received notice of the registration during the year following the registration and threatened to file a petition to set aside the registration if its lien were not recognized or provided for. The owners thereupon executed a Torrens mortgage for the amount due the bank and had the same registered.

In a number of cases in San Bernardino County it is reported that petitioners have made the necessary allegation of adverse possession to permit registration without furnishing an abstract of the record title, when in fact the lots sought to be registered were vacant, uninclosed and uncultivated lots, and not held adversely as against the world. Evidently the petitioner did not know the meaning of "Actual, exclusive and adverse possession," and the attorneys did not take the trouble to explain, so that in so swearing the applicant was guilty of perjury.

Conclusion. The registration decree cannot be final, safe and sound, rendered largely in default cases, based wholly on the petition and testimony of the applicant. No

abstract of the record title being furnished the court is wholly at the mercy of the applicant. There is no way to determine who the interested parties are that they may be served and brought under the jurisdiction of the court and their rights adjudicated.

Regardless of what we may think of the so-called Torrens system generally, we must conclude that the California law which throws no safe-guards about the registration decree, upon which all subsequent Torrens certificates are based, is unsound, unsafe and un-American, and will spell loss and disaster and litigation to those who accept and rely wholly on such evidences of title.

J. L. MACK.

San Bernardino, Cal.

COLLEGES AND UNIVERSITIES—LIABILITY FOR TORT.

HAMBURGER v. CORNELL UNIVERSITY.

Supreme Court, Appellate Division, Third Department. September 11, 1918.

172 N. Y. Supp. 5.

Cornell University, creation of Legislature to carry out purposes of private donor and United States, with others who may contribute, is not a corporation administering government activity, in the sense that it is absolved from liability for negligence of servants resulting in injury to student.

WOODWARD, J. The learned court at Special Term reaches the conclusion that our common school system is a branch or department of government, and those who administer it are administering a government activity or function, are the ministers or servants of the state in so doing, and would not be liable in negligence for misuser or nonuser, and then sets forth some of the statutory history of Cornell University, and reaches the conclusion that this corporation is likewise administering a government activity or function, and is therefore absolved from liability for the negligence of its servants and agents. But we are of the opinion that there is no such breadth to the rule invoked, which is concededly an exception to the general rule of liability on the part of corporate bodies. Railroad corporations, for instance, are created for the purpose of discharging a governmental activity (Olcott v. Supervisors, 16 Wall. 678, 21 L. Ed. 382; N. Y. & N. E. Co. v. Bristol, 151 U. S. 556, 567, 14 Sup. Ct. 437, 38 L. Ed. 269; Smyth v. Ames, 169 U. S. 466, 544, 18 Sup. Ct. 418, 42 L. Ed. 819; Louisville & Nashville R. R. v. Kentucky, 161 U. S. 677, 696, 16 Sup. Ct. 714, 40 L. Ed. 849); but no court has ever yet suggested that these corporations were free from the liabilities which attach to private corporations, as to individuals, in the event of negligent conduct by which others are subjected to damages. An examination of the adjudicated cases will, we believe, disclose that there is no well-considered case which applies to the rule of non-liability to any private or quasi private corporation, unless such corporation was engaged in a correctional or charitable work belonging to the state at large.

Municipal corporations, in the conduct of their fire departments, police forces, and hospitals, come within the rule invoked, and private corporations, which are made use of by the state for the purpose of correctional punishments or detentions, are brought within the exception to the general rule; but a university, devoted to the higher branches of learning, has never been considered as discharging such a duty to the public or the state as to give it immunity from the ordinary rules which govern other corporations. It is difficult to distinguish Cornell University from Dartmouth College under the law; they were both endowed, both incorporated. While Dartmouth College did not receive any part of its endowment from the United States government, this fact can hardly distinguish it, in character, from other universities based on private endowments, and it is well known that Cornell University was substantially endowed by Ezra Cornell, and that the incorporation was for the purpose of marshaling the assets and devoting them to the branches of education contemplated. The funds which came to Cornell University from the Land Grant Act were, in so far as the state of New York is concerned, contributed by a party other than the state, and the character of the institution, as involving governmental functions of the state, is not different from that which would be involved if the donor had been a private person or a foreign government. It is therefore essentially what Dartmouth College was, an eleemosynary (1 Blackstone's Commentaries, 471), and, as far as respects its funds, a private corporation (Dartmouth Col-

lege v. Woodward, 4 Wheat. 518, 634, 4. L. Ed. 629). Chief Justice Marshall, after arriving at the above conclusion, says:

"Do its objects stamp on it a different character? Are the trustees and professors public officers, invested with any portion of political power, partaking in any degree in the administration of civil government, and performing duties which flow from the sovereign authority? That education is an object of national concern, and a proper subject of legislation, all admit. That there may be an institution founded by government, and placed entirely under its immediate control, the officers of which would be public officers, amenable exclusively to government, none will deny. But is Dartmouth College such an institution? Is education altogether in the hands of government? Does every teacher of youth become a public officer, and do donations for the purpose of education necessarily become public property, so far that the will of the Legislature, not the will of the donor, becomes the law of the donation? * * * Whence, then, can be derived the idea that Dartmouth College has become a public institution, and its trustees public officers, exercising powers conferred by the public for public objects? Not from the source whence its funds were drawn, for its foundation is purely private and eleemosynary; not from the application of those funds, for money may be given for education, and the persons receiving it do not, by being employed in the education of youth, become members of the civil government. Is it from the act of incorporation? Let this subject be considered. A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances, for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities, that corporations were invented and are in use. By these means a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being. *But this being does not share in the civil government of the country, unless that be the purpose for which it was created.* Its immortality no more confers on it political power, or a political character, than immortality would confer such power or character on a natural person. It is no more a state instrument than a natural person exercising the same powers would be. If, then, a natural person, employed by individuals in the education of youth, or for the government of a seminary in which youth is educated, would not become a public officer, or be considered as a member of the civil government, how is it that this artificial being, created by law, for the purpose of being employed by the same individuals for the same purposes, should become a part of the civil government of the country? * * * The objects for which a corporation is created are universally such as the government wishes to promote. They are deemed beneficial to the country; and this benefit constitutes the consideration, and, in most cases, the sole consideration, of the grant."

This, it seems to us, is a very complete answer to the theory on which this demurrer has been decided. Cornell University is not created for the purpose of undertaking any governmental function whatever. It is a mere creation of the Legislature for the purpose of carrying out the purposes of Ezra Cornell and the United States government, with others who might contribute, and is essentially just such an institution as the Dartmouth College, in so far as any question here involved is concerned. It was not created for the purpose of carrying out any of the governmental functions of the state of New York, and it is not, therefore, freed from the obligations which attach to any other private corporation. It contracted with this plaintiff for the purpose of furnishing her an education in certain lines, and it owed her the duty of exercising reasonable care in the carrying out of that contract.

The order appealed from should be reversed, with costs, with permission to the defendant to plead over within twenty days, if so advised. All concur, except JOHN M. KELLOGG, P. J., who dissents, on the opinion at Special Term.

NOTE.—*Liability of College or University in Action for Tort.*—In Hopkins v. Clemenson Agr. College of So. Ca., 221 U. S. 636, 31 Sup. Ct. 654, 55 L. ed. 890, 35 L. R. A. (N. S.) 243, the court said that immunity from suit is a high attribute of sovereignty, and cannot be availed of by a public agent such as an agricultural college, and, further, that the fact that such college was aided by the state as one of its agencies was not conclusive of the right to subject its property to a claim against it for a tort.

In Williamson v. Louisville Industrial School, 95 Ky. 251, 24 S. W. 1065, 23 L. R. A. 200, 44 Am. St. Rep. 243, it was held that an institution for the care of neglected and abandoned children was not liable for an assault upon an infant inmate by one of its employes, because the institution was acting for the state as *parens patriae* and its functions were governmental. But it was admitted in the opinion that this does not mean it may not incur liability in any case, as say for maintaining a public nuisance and in actions upon contract.

And in Trevett v. Prison Assn. of Va., 98 Va. 332, 36 S. E. 373, 50 L. R. A. 564, 81 Am. St.

Rep. 727, a prison association not controlled by the state and enforcing its own laws and regulations for the management of its affairs is subject to all the responsibilities of any private corporation, including torts by its officers or employes. This was, however, a nuisance case, being pollution of water flowing to adjoining premises.

But it has been held that if a college or university is not in any just sense a corporation at all, but a mere agency of a state, it belongs to the state and so may its property, and acts by its officers are acts by the state. Weary v. State University, 41 Iowa 335.

If, however, it is an institution which conducts its business for compensation, it is liable like any other corporation. Medical College of Ga. v. Rushing, 1 Ga. App. 468, 57 S. E. 1083.

In Dunn v. Brown County Agri. Soc., 46 Ohio St. 93, 18 N. E. 496, 1 L. R. A. 754, 15 Am. St. Rep. 556, there was injury to a patron at a fair, occupying a seat in a grand stand. It was held that it was liable for injuries caused by improper management of its property.

In Gross v. Ky. Bd. of Managers, 105 Ky. 840, 49 S. W. 458, 43 L. R. A. 703, a board of managers of World's Columbian Exposition was held liable for its contracts, where, though the state appointed them, it yet declared it would not be responsible for its indebtedness. It was said that if it was a corporation or a quasi-corporation there was no reason for exemption of it from suit.

It would appear that an educational institution is not exempt on any theory of its being eleemosynary in its character, and it is not part of a public school system which may be like any ordinary municipal corporation. It is not, so to speak, an arm of the state, when it is pursuing a course which only in a general sense is promotive of its weal. This, however, might be urged as to many other institutions which do not lay any claim to exemption from suit. C.

ITEMS OF PROFESSIONAL INTEREST.

SPONTANEOUS JUDICIAL UTTERANCES ON THE CLOSE OF THE WAR.

Spontaneity is often more delightfully characteristic of thought than studied elegance and accuracy. For that reason we were charmed with the impromptu remarks of the several judges of the city of New York in adjourning their courts on Nov. 11th, 1918, on publication of the news that the armistice had been signed by Germany. These remarks are reported in the New York Law Journal, and we quote from them as follows:

Before excusing his jurors for the day Justice Meyer said:

"It may be years before a correct history of what has transpired there will be written, but the events that have been chronicled in the daily press are sufficient to impress upon the mind of every individual living today that the most wonderful feat in history has been accomplished by an army of civilians, untrained, unaccustomed to warfare, unaccustomed to the use of arms, in the short space of eighteen months. Probably no such achievement has ever been accomplished before in the history of the world. We were pitted against nations which had for several decades been preparing for the conflict, and we, wholly unprepared, taking our young men from civil life, have been able to go over there and teach those militant countries the place where they belong on the map of the world and this morning the welcome news comes to us that the one who was the instigator of this horrible strife has abdicated together with his successor, his son, and that Europe from one end to the other is to become a nation of democracies. The world is to be congratulated upon this wonderful achievement."

Justice John Ford addressed the Bar, saying:

"I feel that I ought to say something by way of relieving my mind in this momentous hour. A splendid page of American history has been written. The most weighty criticism against our conduct during the past four years has been our dilatoriness in getting into the war, and yet I doubt if the American people could have been induced to consent to a declaration of war a moment earlier than we actually did declare war. This war did not become to us a war to the death between democracy and autocracy. You remember the indignities placed upon us, the murder of our people at sea, and the denial to us of the use of the highways of the sea. You remember the condition laid down by Germany that we could send one ship a week painted like a gigantic barber pole through that one narrow lane they marked out for us; and then the ruthless submarine warfare, and Germany's breach of faith in its resumption. There was nothing left for us to do as a self-respecting nation, and we went in unselfishly, and fortunately we had a spokesman for our country who represented the real feelings of our people so nearly, I believe, as any human being could represent them; represented our burning desire for peace between all nations, justice between all nations, particularly justice and fair dealing to the small and weak nations.

"We have suffered long, but we displayed to the world that force in the war which showed that we knew how to wage war. It is a lesson to European countries. It was not Germany alone who thought of us as money grubbers, with no national feeling, no patriotism. We were a congeries of different nationalities. Why the German statesmen were advised by their German spies in this country that the German vote was so strong here that no President would dare to do anything that would alienate it; everything was run by selfish political consideration and then the Irish, of course, in this country could not be de-

pended upon because of their enmity for England, and this, and that and the other thing. But when the war bugle sounded our nation acted as one man and all other considerations were put aside whenever the old Flag was raised in any crowd, no matter whether they were German-Americans or Irish-Americans, so-called, or descendants of the Pilgrims of Plymouth. It was a war for liberty and for justice and for peace.

"I hope that while in the most serious phase of the conflict that is yet ahead of us we will prove our moderation and put no blot upon this glorious page of American history. I believe, however, that a measure of justice should be meted out to Germany as the author of this awful conflict. I think that we ought to, upon our own part, demand reparation for actual damage done. One thing in particular I hope our nation will insist upon, and that is, indemnity for the loss of life and property on the Lusitania, and then indemnity for our shipping sunk and the lives lost in contravention of international law and the laws of war. But as for new territory, as for punitive indemnities merely, that, I hope, we shall not insist upon. We have been put to enormous expense. We have made enormous sacrifices. But I hope we will bear those."

Municipal Court Justice Lynn said:

"In granting the motion to adjourn this day I feel moved to say that this date, November 11, 1918, probably marks the greatest date in all human history. I know of no other day that is more closely associated with the world's betterment than this day. There are some divisions of sentiment about other national holidays, but there can be no division of sentiment about November 11. It probably marks the beginning of the greatest period of peace and good will in the world. We have today the liberation not merely of the unfortunate country that has been cursed by a war emperor, and that has permitted itself to follow militarism and so-called 'might making right,' but we have the uplifting of a dozen or more nations; we have troublesome questions settled that the world was trying to settle for a thousand years, and all the outcome of this terrible blood atonement. Poland, that was once a great empire, a great people, is now being restored. The Syrian people, who gave civilization to the world 5,000 years ago, is now about to take its own form of government. Palestine, the seat of all the great religious work over the world, is going back to its original people, the Jewish people — a place that is made sacred as well to the Christian people. The great empires of Mesopotamia and of Arabia are being revived. The curse of the strong over the weak is being removed from the world. This idea that might makes right is destroyed, and it is a very happy omen that this new land, this great republic of America, should be the instrument of the Divine will to create this condition."

BOOK REVIEW

WAGNER'S REVISED CODE OF ST. LOUIS.

It is so seldom that we have opportunity to review a volume of city ordinances that when we received a request to review the new Revised Code of St. Louis we consented with a hope of gaining some idea of the scope and importance of this branch of municipal law.

The new Revised Code of St. Louis was prepared by Mr. Hugh K. Wagner, a member in high standing of the St. Louis Bar. The work was made necessary by the adoption of a new city charter by St. Louis which required many changes in city ordinances to adapt them to the new conditions.

St. Louis, being one of a very few cities which is part of no county but is for all practical purposes a county in itself, offers a basis for the study of city government from a most advantageous standpoint. The new charter is probably the most liberal charter of municipal powers ever granted to any city. The city has power to tax for "all general or special purposes" and on "all subjects or objects of taxation;" to make special assessments; to incur debts with restriction; to issue bonds without limit as to amount, either "upon the credit of the city or solely on the credit of specific property," or on income "derived from the operation of any public utility owned by the city;" to expend money for any lawful purpose; to buy, hold, sell or mortgage real or personal property; to acquire and operate public utilities; to regulate rates and charges of public utilities; to provide and maintain "charitable, educational, recreative, curative, corrective, detentive or penal institutions." These are a few of thirty-two special powers granted to the city which are concluded with a general grant "to do all things whatsoever expedient for promoting or maintaining the comfort, education, morals, peace, government, health, welfare, trade, commerce, or manufactures of the city or its inhabitants."

The foregoing broad powers give ample scope to a city legislature to provide for the comfort and convenience of its inhabitants and the opportunity thus afforded has not been neglected by the Board of Aldermen of St. Louis, who have passed ordinances which, after being codified and amended, fill a volume of 865 pages.

The arrangement of the new codes is admirable, having in view not only the convenience of those who consult it but the logical sequence of the matter. There are comparatively few general headings, such as Aldermen, Courts, Finance, Law Department, Licenses, Misdemeanors, Officers and Public Service. These are arranged alphabetically. All ordinances are logically classified under some one of the general headings. The most important general classification is that of Public Service. This is divided into four principal parts: I. Public Utilities; II. Streets and Sewers; III. Public Welfare; IV. Public Safety. Public Utilities is subdivided into Water Division; Light, Heat and Power; Bridges; Steam Railroads; Street Railways; Streets and Sewers is subdivided into Streets, Wharves, Sewers. Public Welfare is subdivided into Health, Hospitals, Parks and Recreation, Correction, Legal Aid. Public Safety is subdivided into Fire and Fire Prevention, Weights and Measures, Buildings and Inspection.

The clear and logical analysis of the great multitude of ordinances is not the only merit of this Revised Code, but the annotation of each section of the code is complete. In many cases the history of the ordinance is given and authorities are cited construing similar ordinances since repealed, or similar ordinances in other cities.

The law of a big city is largely administrative and highly technical. It does not lend itself to philosophical speculation to any great extent. Its application, however, is growing in extent and affecting more and more the important financial and personal business of the citizen. Therefore it calls for the careful study of the lawyer to prevent injustice and secure the beneficent purposes intended. In this sense the codifier of the ordinances of a great city who has done his work well has rendered a distinct public service.

Printed in one volume of 1811 pages and published by the Register of the City of St. Louis.

BOOKS RECEIVED.

The Centennial History of the Harvard Law School. 1817-1917. Published by the Harvard Law School Association. 1917. Price, $1.50. Review will follow.

HUMOR OF THE LAW.

A client of Gieumo Annert's came in to see him about an encroaching neighbor.

"My neighbor's house is eight inches over on my land," he said. "I want you to have that house moved by an injunction. I have already had an x-ray taken of the lot."

He must have had a "family lawyer" book at home, thinks Annert.

Classroom Law Professor—"What duty does a railroad owe to a trespasser on the track?"

Law Student—"The last clear chance."

Professor—"To do what?"

Law Student—"To get off the track."—National Corporation Reporter.

Judge Albert C. Barnes, of Chicago, after a humorous introduction to members of the Illinois Bar Association, said: "I do not know how I can respond more fittingly to the doubtful compliments paid me in this introduction, than by quoting what was said by the late Emory Storrs on one occasion when he went into the criminal court and pleaded his client guilty to keeping a common gaming house, expecting thereby to receive favorable consideration for his client in the way of a small fine. But the court, taking another view of the situation, imposed the maximum fine prescribed by the statute. Rising from his seat, Mr. Storrs said with great solemnity, 'You have dignified the calling of my client beyond his wildest expectations.'"

Addressing a political gathering, Congressman William R. Wood of Indiana said that every man should stick to his own job, and as an illustration he told of a youth who wanted some sentimental verses to send to a young woman on the occasion of her birthday.

Not being much of a versifier himself, the youth went to a poetic friend and asked him to oblige.

"Why, certainly," generously responded the poet. "What do you want me to say to her?"

"Oh, anything in a poetical way," answered the youth. "You ought to know what I want. Something sweet and rather tender; but remember that I don't want to commit myself in any way."

"Look here, old pal," said the friend, with a merry smile, "you don't want a poet to draw up your verses—you want a lawyer."—Philadelphia Telegraph.

WEEKLY DIGEST.

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Animals**—Proximate Cause. — Though plaintiff's horse was negligently allowed to be at large in violation of law, and was killed by an automobile which defendant permitted his son to drive in violation of the town law, plaintiff might recover if his act was not the proximate cause of the accident.—Haynes v. Kay, S. C., 96 S. E. 623.

2. **Attorney and Client**—Authority of Attorney.—Agreement, made with defendant in execution by attorney for plaintiff in execution, to have sheriff release defendant's property from levy, was not binding on plaintiff in execution. —Barton v. Burton Mfg. Co., Ala., 79 So. 664.

3.——Contract of Employment.—Where an attorney's contract of employment provided for a fixed fee to be remitted to client in case attorney's fees were allowed by the court unless a greater recovery was had than that offered by defendant, and the client settled the case for a lesser amount, the attorney could recover the fixed fee only.—Davies & Davies v. Patterson, Ark., 205 S. W. 118.

4. **Bankruptcy**—Concealing Assets.—A member of a bankrupt partnership, although not himself adjudged a bankrupt, is subject to prosecution for the fraudulent concealment of property of the partnership from its trustee, under Bankruptcy Act, § 29b (1).—Conetto v. United States, U. S. C. C. A., 251 F. 42.

5.——Hinder, Delay, and Defraud.—Though property transferred by bankrupts within four months of insolvency was subsequently on demand surrendered by the transferees to the trustee in bankruptcy, a finding that the previous transfer was made with intent to hinder, delay, or defraud creditors, within Bankruptcy Act, § 14 (4) (Comp. St. 1916, § 9598), is no way affected, and discharge may be denied.—In re Singer, U. S. C. C. A., 251 F. 51.

6.——Intervention.—Intervener, who, with knowledge of facts and without any claim of ownership, permitted bankrupt to hold exclusive possession of residence property, make substantial improvements, etc., could not, after more than 20 years, contravene lien of trustee in behalf of creditors, for whose debts property was expressly or impliedly pledged, to his knowledge.—In re Rawlins Mercantile Co., U. S. D. C., 251 F. 164.

7.——Rental.—A landlord cannot be allowed from the estate of a bankrupt rent for the use of premises while he himself is in possession. —In re H. M. Lasker Co., U. S. C. C. A., 251 F. 53.

8.——State Law.—Under the law of Pennsylvania a sale of personalty by a bankrupt in good faith to his mother-in-law, with whom he and his wife lived as one family and for whom he worked, is not invalid as to creditors because there was no visible change of possession.—In re Komara, U. S. C. C. A., 251 F. 47.

9. **Banks and Banking**—Agency.—A vice president of a bank, acting for himself in a transaction with the bank, must be regarded as a stranger to it, and knowledge on his part of illegal consideration of note assigned by him to bank does not impute knowledge to bank.—State v. Emery, Okla., 174 P. 770.

10.——Declaration of Dividends.—Directors of a national bank are not liable for voting and declaring dividends out of the capital, if they exercised reasonable diligence and acted in good faith, in the belief that the dividends were payable from net profits.—Williams v. Spensley, U. S. C. C. A., 251 F. 58.

11.——Forgery.—A bank, paying on forged indorsement a check payable to fictitious person, obtained from maker by fraud of person in whom he had confidence, was guilty of proximate negligence, rendering it liable, within rule as to which of two innocent persons shall suffer for act of third person.—Robertson Banking Co. v. Brasfield, Ala., 79 So. 651.

12.——Forgery.—Where a bank, for 10 cents on $100, honored checks of a corporation's branch manager, receiving credit daily by its correspondent in another city for checks so drawn, law of liability as between depositor and banker for payment of forged checks regulated liability of bank to corporation.—East St. Louis Cotton Oil Co. v. Bank of Steele, Mo., 205 S. W. 96.

13.——Liquidation.—Under Banking Law, §§ 69, 71, the allowance of claims against a bank, under control of the superintendent of banks for purposes of liquidation, puts the claimant in a position of a judgment creditor though the status of the bank is not that of a simple judgment debtor.—Dorland v. Fidelity Development Co., N. Y., 171 N. Y. S. 1000.

14. **Bills and Notes**—Confidential Relation.—Where maker induced his cousin, who was ignorant of matters of business, to indorse a note under his representation that she was legally obliged to do so as the beneficiary under a former indorser's will, such misrepresentations amounted to fraud on the part of the maker in view of the trust and confidence reposed by the indorser in the maker.—Easton-Taylor Trust Co. v. Loker, Mo., 205 S. W. 87.

15.——Indorser.—A qualified indorser, in an action on the instrument, brought by subsequent bona fide holder, cannot impeach his warranties by objecting to a judgment against the maker and prior indorsers in favor of the holder.—State Exch. Bank of Elk City v. National Bank of Commerce of St. Louis, Mo., Okla., 174 P. 796.

16. **Boundaries**—Dedication.—Dedication of a street being revoked, conveyance of its bed from its northerly terminus to its southerly terminus at a pond is sufficient to carry whatever right the grantor's estate had in the bed of the pond in front of the street.—Bowie v. Western Maryland R. Terminal Co., Md., 104 A. 461.

17. **Carriers of Goods**—Seizure by Officer.—Where shipper had due notice of proceedings in which property is taken from the carrier by attachment, if he fails to protect his interest, it is immaterial, in action against carrier, whether the attachment proceedings were erroneous as a matter of law.—Pecos Valley Trading Co. v. Atchison, T. & S. F. Ry. Co., N. M., 174 P. 736.

18. **Carriers of Passengers**—Evidence.—In action against carrier for personal injury, evidence as to number of passengers on the car, and that the back platform was crowded, was admissible to show why plaintiff attempted to board front platform instead of the rear end.—Georgia Ry. & Power Co. v. Freeney, Ga., 96 S. E. 575.

19.——News Agent.—A railroad, permitting a news agent on its train under contract with

another, was liable for his assault on a passenger in the course of and within the scope of his business, as he was its agent in respect to the carriage of passengers.—Blankenbaker v. Chicago, M. & St. P. Ry. Co., S. D., 168 N. W. 744.

20. **Champerty and Maintenance**—Indian Allotments.—Where a minor Cherokee freedman gave a deed to his allotted lands and his grantees held possession for more than one year and after his majority conveyed to another, validity of second conveyance held not affected by champerty statute; Rev. Laws 1910, § 2260, being controlled by congressional act.—Sanders v. Melson, Okla., 174 P. 755.

21. **Chattel Mortgages**—Conversion.—Where at the execution of a chattel mortgage the property is in the possession of a third person, the act of such person in refusing to deliver the property to the mortgagee after default constituted a conversion as of the date of the demand; his prior possession being immaterial.—Mitchell v. Wood, 174 P. 677.

22. **Constitutional Law**—Industrial Commission.—Under Const. art. 1, § 11, giving a right of action in the courts for any injury, a master, under the Industrial Commission Law, has the right of appeal to the courts from the order of the Industrial Commission, as to the question of ultimate liability.—Industrial Commission of Utah v. Evans, Utah, 174 P. 825.

23. **Contracts**—Extra Work.—The term "extra work" in a construction contract applies to work of a character not contemplated by the parties and not controlled by the contract, while "additional work" is such as may fairly be presumed to arise in the construction, and is within the contract, although not included in the plans and specifications.—Wilson v. Salt Lake City, Utah, 174 P. 847.

24.——Public Policy.—A contract whereby one agrees to procure testimony of certain facts which will successfully support or defeat a lawsuit, or which provides that payment to the one procuring such testimony is to be contingent upon the result of the lawsuit, is void, being calculated to induce false charges and perjured testimony.—Hare v. McGue, Cal., 174 P. 663.

25. **Corporations**—Similarity of Name.—Corporations will generally be considered legal entities, but where there are two or more of similar names and one is the other's agent, court will look to the substance, and if it appears to be organized to defeat action by individuals, its corporate character will not prevent proper relief.—Advance-Rumely Thresher Co. v. Geyer, N. D., 168 N. W. 731.

26. **Damages**—Immunity.—Where a brakeman was injured by the negligence of his employer, and his permanent recovery rendered more precarious and doubtful by reason of a venereal disease, the employer could not claim entire or partial immunity on that account.—Dahlquist v. Denver & R. G. R. Co., Utah, 174 P. 833.

27.——Trespass.—Where complaint was based on a single trespass ousting plaintiff from land and alleged damages to live stock, other personal property, expense of moving, mesne profits, etc., in addition to general damage clause, expunging the special damages pleaded was error.—Gomez v. Reed, Cal., 174 P. 658.

28. **Death**—Pain and Suffering.—Under federal Employers' Liability Act, both the causes of action for pain and suffering between injury and death and for pecuniary damages to the next of kin must be sent up in the pleadings, if recovery is sought on each cause of action.—Lennon v. Erie R. Co., N. J., 104 A. 444.

29. **Electricity**—Public Service Commission.—In determining whether a company furnishing electric current to certain individuals is a public utility, and subject to control of the Public Service Commission, so that the Commission may compel it to reinstate service to a given individual, it is immaterial with what motive the service was discontinued.—State ex rel. M. O. Danciger & Co. v. Public Service Commission of Missouri, Mo., 205 S. W. 36.

30. **Eminent Domain**—Damages.—Where park commissioners condemn land adjoining a park for purposes of its extension, the value of the premises taken and improvements made for purpose of serving refreshments and entertaining visitors should be considered on the question of damages.—Rowan v. Commonwealth, Pa., 104 A. 502.

31.——Jurisdiction.—Where a railroad company commenced condemnation proceedings and adverse claimants of the land made claim to condemnation money which was never paid into court or to be the true owner, the court had no jurisdiction to determine the title to the land as between the claimants so as to make its adjudication binding in a subsequent suit by one of the claimants to quiet title.—Murphy v. Barron, Mo., 205 S. W. 49.

32. **Estoppel**—Benefit Received.—Where husband contracted for construction of buildings as owner of land and as owner expended his money, giving of contractor's bond was part of inducement to him, and obligors named should not be heard to deny his title to land and thereby escape liability.—Cohn v. Smith, Cal., 174 P. 682.

33.——Privity in Estate.—Where surviving wife for many years claimed merely homestead estate in land to which she had fee-simple title, because husband and wife had held land by entirety, her delay in asserting fee-simple title thereto does not estop parties claiming under her from asserting title, where parties invoking estoppel were not prejudiced thereby.—Burke v. Murphy, Mo., 205 S. W. 32.

34. **Frauds, Statute of**—Executory Contract.—Two writings in identical form containing terms of an executory contract of sale by named parties, and each identified by same contract number, and purporting within itself to be a duplicate of another to be signed by opposite party, can, when so executed, be connected together, without the aid of parol testimony, and thus meet the requirements of the statute of frauds.—McFadden v. White City Mfg. Co., Ga., 96 S. E. 581.

35. **Fraudulent Conveyances**—Badge of Fraud.—In an action to set aside a deed as fraudulent as to third persons, any unusual clause in the deed, or unusual method of conducting business, apparently done to give the transaction an air of honesty and good faith, is of itself a badge of fraud.—Barber v. Nunn, Mo., 205 S. W. 14.

36.——Bulk Sales Law.—An assignment of all assets, including stock in trade, for benefit of creditors, is not void as to creditors as a sale of stock in trade, in violation of Laws 1909, c. 69, § 1.—Eldredge Brewing Co. v. Cocheco Bottling Co., N. H., 104 A. 453.

37.——Inherited Property.—If a man is in debt, and inherits property, or it becomes vested in him as a tenant by the entireties, he cannot give it away to the deprivation of his creditors merely because credit was not given him on the faith of his ownership of the property.—Turner v. Hudson Cement & Supply Co. of Baltimore City, Md., 104 A. 455.

38. **Guaranty**—Executory Contract.—Where executory contract of guaranty provides for withdrawal by guarantor, he may withdraw without liability for responsibility incurred after notice of his intention to withdraw.—W. T. Rawleigh Medical Co. v. Burney, Ga., 96 S. E. 578.

39. **Highways**—Road Bonds.—A purchaser of road bonds, for value and before maturity in the usual course of business, need only ascertain at his peril if the commissioners of the road district had power to issue the bonds, but he need not inquire with reference to matters of detail as to their issuance.—Rose v. Springfield and Brookline Special Road Dist., Mo., 205 S. W. 54.

40. **Injunction**—Unfair Business.—"Bannering" a moving picture house as unfair to organized labor, and thereby deterring the public from patronizing it, if to compel the owner not to work himself, is unlawful, and may be enjoined.—Roraback v. Motion Picture Machine Operators' Union of Minneapolis, Minn., 168 N. W. 766.

41.——Void Municipal Ordinance.—Where prosecutions are threatened under a void municipal ordinance, and the effect of such prosecutions would tend to injure or destroy property

of the persons prosecuted, equity will inquire into the validity of the ordinance and enjoin its enforcement.—Glover v. City of Atlanta, Ga., 96 S. E. 562.

42. **Insurance**—Accident.—In an accident policy, clause limiting insurer's previously expressed liability, where the injury or loss "results from or is contributed to by any poison, disease, infection, etc., such limitation applies only to a disease or infection from which the deceased was suffering prior to or at the time of the accident.—Finucane v. Standard Acc. Ins. Co., N. Y., 171 N. Y. S. 1018.

43.——Delivery of Policy.—Under Rev. St. 1909, § 6995, placing fire insurance on ships, steamboats, and other vessels in same class with insurance on houses, buildings, merchandise, and furniture, a policy, delivered in the state to a resident of the state, insuring a steamboat against fire, is a "fire insurance policy," and governed by the fire insurance statutes of the state.—Tinsley v. Aetna Ins. Co. of Hartford, Conn., Mo., 205 S. W. 78.

44.——Embezzlement.—To draw up count, free from appropriate demurrer, on bond assuring employe's fidelity as to duties that had been or were to be stated during currency of bond in writing by employer to indemnitor, pleader should have incorporated allegations that attributed claimed pecuniary loss to act of larceny or embezzlement in duties defined in writings mentioned.—Illinois Surety Co. v. Donaldson, Ala., 79 So. 667.

45.——Imputability.—Notice of a condition that would work a forfeiture of a policy gained by the managing agent acting within the scope of his authority is imputable to the company.—Federal Life Ins. Co. v. Whitehead, Okla., 174 P. 784.

46.——Indemnifying Employer.—Under policy indemnifying an employer against actions by employes for injuries requiring as condition precedent to liability of the insurer that immediate notice be given of the injury, the employer could not recover in the absence of such notice, notwithstanding no technical forfeiture was provided for in the policy.—Phoenix Cotton Oil Co. v. Royal Indemnity Co., Tenn., 205 S. W. 128.

47.——Merger.—Where plaintiff's husband was a member of a benefit society which was merged with defendant society, and a by-law of the original society provided for action on death of member within one year, but a by-law of the society with which it was merged provided for action within two years, an action so brought was within time.—Huntington v. Supreme Comandery, United Order of the Golden Cross of the World, Pa., 104 A. 498.

48.——Reforming Policy.—That insured had his life insurance policy made payable to his mistress upon her promise to continue illicit relations with him does not entitle the executors of insured's estate, upon insured's death, to have the policy reformed to make it payable to them.—McBride v. Garland, N. J., 104 A. 435.

49. **International Law**—Jurisdiction.—That both plaintiff and defendant in a conversion suit for property sequestered by an agency of a foreign government are citizens of a foreign country wherein the wrong complained of was committed does not deprive the courts of this state of jurisdiction.—Molina v. Comision Regulâdora del Mercado de Henequen, N. J., 104 A. 450.

50. **Invitee**—Negligence.—The invitee or guest of the driver of a vehicle is not charged with the same strict duty of keeping a lookout as the driver, and where the driver was experienced and competent and the plaintiff was a guest and an inexperienced minor, and the circumstances would not cause all reasonable men to conclude that plaintiff was negligent, plaintiff was not guilty of contributory negligence as a matter of law.—Montague v. Salt Lake & U. R. Co., Utah, 174 P. 871.

51. **Landlord and Tenant**—Master and Servant.—Contract by which accused agreed to prepare, plant, cultivate, and gather cotton, ae directed by the other party, and to accept "for my part of the crop" certain produce, made the parties share croppers, and not partners, nor master and servant.—State v. Sanders, S. C., 96 S. E. 622.

52.——Tenancy in Common.—Service of notice to quit on one of two tenants in common is sufficient, as a general rule, to terminate the tenancy as to both.—McNally v. Leach, Mo., 205 S. W. 82.

53. **Master and Servant**—Contributory Negligence.—In an action for personal injuries to a minor, unlawfully employed, Page & A. Gen. Code, § 6245—2, applies, and the defense of contributory negligence is not available to the employer, unless he shows by a preponderance of evidence that there was fraud or misrepresentation by the minor as to his age.—Acklin Stamping Co. v. Kutz, Ohio, 120 N. E. 229.

54.——Course of Employment.—Where foreman of a repair gang on a much-traveled highway, whose work did not require his uninterrupted attention, was injured while crossing the road to speak to a friend who had driven up, the injury arose out of and in the course of his employment, within Workmen's Compensation Act.—Robinson v. State, Conn., 104 A. 491.

55.——Damages.—In an action under the federal Employer's Liability Act, measure of damages is to be determined according to the provisions of the act itself and the general common law as administered by the federal courts, unaffected by state legislation and decisions of state courts.—Laughlin v. Kansas City Southern Ry. Co., Mo., 205 S. W. 3.

56.——Presumption of Agency.—If the owner of an automobile intrusts it to another, or leaves it so that another may use it, such other must be presumed to be the owner's agent.—Moore v. Roddie, Wash., 174 P. 648.

57.——Workmen's Compensation Act.—Where one seeking workmen's compensation was hired as janitor, whose duty extended to care of the grounds and trimming of the trees, and who was injured when trimming tree left unsightly by a former attempt to trim it so as to admit light to the building, determination that he was engaged in horticulture, and not entitled to compensation, was not unreasonable.—George v. Industrial Accident Commission, Cal., 174 P. 653.

58.——Workmen's Compensation Act.—Workmen's Compensation Act, pt. B, § 12, as amended by Pub. Acts 1915, c. 288, providing that compensation for named injuries shall be in "lieu of all other payments," refers to payments for the named injuries, and does not limit the award to compensation provided for the named injury.—Franko v. William Schollhorn Co., Conn., 104 A. 485.

59. **Mechanics' Liens**—Estoppel. — Plaintiff, contracting for material for a new house then intended by both husband and wife to be their home, had the burden of showing acts of estoppel whereby the lien would attach to either building or land.—Jensen v. Griffin, S. D., 168 N. W. 764.

60. **Mines and Minerals**—Royalty.—Where there is a prior oil and gas lease and lessor grants another all royalty interest in the oil and gas after exclusive authority to drill for oil and gas after prior lease expires, the grant vests grantee with fee-simple title to the oil and gas in place.—Snodgrass v. Koen, W. Va., 96 S. E. 606.

61.——Waiver of Forfeiture.—Where tenants in common of coal land made a joint lease thereof, not several with reference to their separate interest, they became partners in the contract, and, where one of them while acting within his apparent scope of authority waived lessee's forfeiture, the other is bound thereby.—Schmidt-Blakely Coal Co. v. Hembree & O'Kane, Ark., 205 S. W. 111.

62. **Mortgages**—Implied Agreement.—Where land is sold subject to mortgage and the amount secured by the mortgage is deducted from the consideration, there is an implied liability on the part of the purchaser, in the absence of an express agreement, to assume the payment of the indebtedness secured by the mortgage.—Sanderson v. Turner, Okla., 174 P. 763.

63.——Injunction.—Where foreclosure of a mortgage by advertisement is enjoined under Comp. Laws 1913, § 8074, and it appears in the subsequent foreclosure action that plaintiff had a right to foreclose under the power of sale, and that there was in fact no valid defense, plaintiff may recover costs and disbursements necessarily incurred in the enjoined proceeding. —McCarty v. Goodsman, N. D., 168 N. W. 721.

64.——Priority.—In a contest for priority between a materialman's lien and a security deed executed by the common debtor after the material was furnished, but before the record of the lien, where it appears that the deed was on a valuable consideration and that the grantee had no knowledge actual or constructive of the lien, it will be presumed that the grantee in the security deed is a purchaser without notice. —Milner v. Wellhouse, Ga., 96 S. E. 566.

65.——Reimbursement for Repairs.—Mortgagee in possession, honestly making repairs under expert advice in the belief that they were necessary for protection of the property, is entitled to reimbursement, though perhaps the necessary repairs under some other method might have been made for a smaller expenditure.—Seacoast Real Estate Co. v. American Timber Co., N. J., 104 A. 437.

66. **Municipal Corporations**—Collision.—Although Comp. Laws 1907, §§ 1143, 1144, and Laws 1915, c. 80, § 16, do not forbid one traveling upon any part of the road, yet the strongest kind of a presumption of negligence shall be held to prevail against a party whose wagon collided with a motorcycle while on the left side of a city street.—Station v. Western Macaroni Mfg. Co., Utah, 174 P. 821.

67.——Police Power.—Where a city receives from a railroad valuable property and other benefits in removal of switching operations, on consideration that city would bear the expense of operating guards at crossing, it is not a contract bartering away its police power.—Florida East Coast Ry. Co. v. City of Miami, Fla., 79 So. 682.

68. **Negligence**—Imputability.—Where occupant and driver of automobile were returning from a trip to see a piano that the latter was trying to sell former, the negligence of latter was imputable to former, the trip being in furtherance of common object, and former being joint adventurer and not guest or invitee. —Lawrence v. Denver & R. G. R. Co., Utah, 174 P. 817.

69.——Self-Preservation.—Where the accident is observed from various points, no presumption, arising from the instincts of self-preservation, can be indulged.—Shortino v. Salt Lake & U. R. Co., Utah, 174 P. 860.

70. **Principal and Surety**—Interest on Bond. —The surety on government contractor's bond is liable for interest from the time of any breach of the contract, even though the government and persons supplying the contractor with materials may maintain separate actions against the bond.—McPhee v. United States, Col., 174 P. 808.

71.——Suit on Bond.—Where the condition of a contractor's bond was that contractor would pay all claims for labor and material, where the contractor failed to pay claims for material, owner could maintain an action on bond without actually satisfying such claims, since liability on the bond accrued when the contractor failed to pay the claims.—Ceremony v. Drummond, Cal., 174 P. 696.

72. **Railroads** — Contributory Negligence. — Where a 15 year old boy riding without permission on a freight car, while holding onto the iron ladder on the side of the car, let go or lost his hold because brakeman was stamping near his fingers and threatened to stamp upon them, he was not guilty of contributory negligence in loosening his hold or in not waiting for a more safe place to alight.—Bowdoin v. Southern Pac. Co., Cal., 174 P. 664.

73.——Illegal Obstruction.—Fact that plaintiff's tank of naphtha was in street, an illegal obstruction thereof, does not of itself prevent plaintiff's recovery against defendant terminal company which ran a car against the tank, thus destroying it and the box over it; plaintiff's illegal action not having proximately caused injury.—John C. Kupferle Foundry Co. v. St. Louis Merchants' Bridge Terminal Ry. Co., Mo., 205 S. W. 57.

74. **Sales**—Breach of Contract.—Where a purchaser of flour has failed to order its delivery within the time specified in the contract, he cannot sue the seller for breach of contract for failure to deliver the remainder of the flour. Caddick Milling Co. v. Moultrie Grocery Co., Ga., 96 S. E. 583.

75.——Evidence.—Where defendant's sales agent testified that he sent an agent to plaintiff to overcome plaintiff's difficulty with a milking machine bought from defendant, evidence as to the acts of such agent sent to plaintiff, as well as an agreement made by him, was admissible in action for breach of warranty of the machine.—Sharples Separator Co. v. Skinner, U. S. C. C. A., 251 F. 25.

76. **Tenancy in Common**—Adverse Possession. —Undisturbed possession of realty as a tenant in common for 10 years, without acts of exclusion equivalent to an actual ouster, raises no presumption of adverse possession as against other tenants in common.—Longfellow v. Byrne, Okla., 174 P. 745.

77. **Trusts**—Reversionary Clause.—Where a deed contains no reversionary clause, does not name a beneficiary, and reserves no rights of any kind, an enforceable trust cannot be impressed on the property by reason of a condition specifying a proper use to which it was to be put by grantees as part of the consideration.—Rudolph v. Bennett, S. D., 168 N. W. 753.

78.——Trustee.—Where owner of incumbered land conveyed title to a son to hold for all his children, and providing that all his children should try to save it from sale, which they did, and it became very valuable, the son became trustee.—Barbee v. Lynch, W. Va., 96 S. E. 593.

79. **Vendor and Purchaser**—Fraud.—Contract induced by fraudulent representations as to quality of land, and providing that purchaser agreed, as part consideration, that he was not relying upon vendor's representations, and waived any claim on that account, did not preclude purchaser's rescission for fraud.—Bunting v. Creglow, N. D., 168 N. W. 727.

80. **Wills**—Children.—A bequest to a daughter for life, and thereafter to her children or grandchildren her surviving, meant children and grandchildren living at death of life tenant.—In re Wickersham's Estate, Pa., 104 A. 509.

81.——Conditional Fee.—Will devising land to daughter "for and during her natural life and at her death to the heirs of her body," and upon daughter's death without issue land to go to father and mother of testatrix, but, if neither survived daughter, latter, if without issue, held to create in the daughter a fee conditional.—Allen v. Brownlee, S. C., 96 S. E. 615.

82.——Distribution per Stirpes.—Where testator devised his property to trustees for the benefit of his children, and directed on the death of his last child the proceeds should be distributed equally among the grandchildren per stirpes, the children and grandchildren were the sole objects of his bounty, and the succession of any child dying without issue passed to the survivors, to the exclusion of personal representatives.—In re Maxwell's Estate, Pa., 104 A. 501.

83. Olographic Will.—Olographic will, containing name in the exordium, but no conclusion or signature or punctuation mark at end, held insufficient to be entitled to probate; there being no inference that testatrix intended name in the introduction as the executing signature. —In re Hurley's Estate, Cal., 174 P. 669.

84.——Remainderman. — Remainderman or beneficiary of a trust seeking to maintain bill to protect property should at least have a vested interest in trust fund, though right of enjoyment is postponed, and a contingent remainderman would not be a proper party plaintiff in suit affecting present ownership of property.—Gunter v. Townsend, Ala., 79 So. 644.

85. **Witnesses**—Husband and Wife.—Despite Rev. Laws, c. 175, § 20, cl. 1, simply prohibiting husband and wife from testifying to private conversations with each other, there is no rule of law that third persons, who hear private conversation between husband and wife, shall be restrained from testifying to what it was.—Commonwealth v. Wakelin, Mass., 120 N. E. 209.